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In the

Supreme Court of the United States

MONICA M. McKENZIE, JEFFREY L. RUSSELL, ROGER LOWENSTEIN, BENITA KICHLER, RICHARD J. PACIULAN, LUISITO L. LOPEZ, ARTHUR MINTZ, HOWARD SOBEN, DAVID ZISSER,

Petitioners,

versus

Hon. WILIAM H. REHNQUIST, CHIEF JUSTICE OF THE JUDICIAL CONFERENCE OF THE UNITED STATES, Hon. JUAN R. TORRUELLA, Hon. JOSEPH L. TAURO, Hon. JON O. NEWMAN, Hon. PETER C. DORSEY, Hon. DOLORES K. SLOVITER, Hon. EDWARD N. CAHN, Hon. J. HARVIE In WILKINSON III, Hon. W.EARL BRITT, Hon. HENRY A. POLITZ, Hon. WILLIAM H. BARBOUR, JR., Hon. BOYCE F. MARTIN, JR., Hon. THOMAS A. WISEMAN, JR., Hon. RICHARD A. POSNER, Hon. MICHAEL M. MIHM, Hon. RICHARD S. ARNOLD, Hon. DONALD E. O'BRIEN, Hon. PROCTOR HUG, JR., Hon. LLOYD D. GEORGE, Hon. STEPHANIE K. SEYMOUR, Hon. CLARRENCE A. BRIMMER, Hon. JOSEPH W. HATCHETT, Hon. WM. TERRELL HODGES, Hon. HARRY T. EDWARDS, Hon. JOHN GARRETT PENN, Hon. GLENN L. ARCHER, JR., Hon. GREGORY W. CARMAN,

Respondents.

On Petition for Writ of Certiorari to The United States Court of Appeals for the District of Columbia

REPLY BRIEF

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REPLY ARGUMENT

The Court Should Grant Review Because The Judgment Entered Without An Opinion Undermines The Integrity Of The Federal Bench And Bar, And This Case Presents An Important Question Of Federal Law That Cannot Go Unanswered Without Causing Imminent Further Litigation And Dishonorable Confrontation With The Federal Judiciary

Since antiquity it has been universally accepted that "no just judge will pronounce one sort of judgment in his own case and a different one in the case of others." Seneca, Moral Essays (Loeb Classical Library 1994) Book I p. 143. This Honorable Court, in its own rules, has declared that *general* admission to its bar is open to qualified lawyers from every State. If this Honorable Court does not in its own rules discriminate favoring one State's attorneys over another's, then neither should Federal District Courts. This Honorable Court should not publicly pronounce one standard in its own rules, and by failure to act allow a different standard in Federal District Courts.

It is simply absurd to require United States District Judges to the swear to the same oath of office to uphold the same Constitution, to receive the same nationwide salary and uniform benefits, and to permit them to adopt home-town protectionist balkanized local rules, that spring directly from and abort the First Amendment guaranteed freedoms. This Court has recognized that competition in the long run increases the quality of advocacy. *FTC v. Superior Court Trial Lawyers Assn.* 493 U.S. 411, 423-24 (1989) Competition enhances performance and the presentation of new ideas. Monopolies produce inefficiency. If in the N.F.L., the New York Giants are not restricted to playing the New York Jets every week, why should federal practice lawyers in

United States District Courts be treated differently? Is competition between professional football players and interstate commerce to be judged by one standard, and competition in United States District Courts between professional members of the bar (who have a constitutional duty and obligation to vindicate federal rights) by another?

Thus, this Court should grant *certiorari* and pronounce judgment as to whether "local" rules that automatically grant *general* admission to inexperienced forum State attorneys, and automatically deny *general* admission to experienced federal practice attorneys from outside the forum State are lawful. These challenged rules are based on a blind and unthinking puffed up selfish devotion to the local bar's monopoly. If justice is a good, the reduction of access to the fountains of justice, cannot be a good. It is an evil. It is dishonorable. This Honorable Court can have no part in what is not honorable. This Honorable Court has a legal and moral duty to curb this pernicious vice.

The petitioners' have argued the challenged "local" Federal District Court rules are conspicuously outmoded and unlawful, and that their legal arguments are unanswerable. In these circumstances, joined with the specter of impropriety flowing from an appellate judgment filed without an opinion and without oral argument, the government's failure to file an Opposition Brief to this Court's granting of *certiorari*, is an admission by silence that *certiorari* should be granted. It is a maxim of law that secrecy is not congenial to truth. This Honorable Court can rest assured that if any legitimate basis existed to support the challenged discriminatory rules in a federal public forum, raised in this petition wherein CHIEF JUSTICE REHNQUIST and the United States Judicial Conference are respondents, that the Solicitor General would have offered it gladly. The Honorable Solicitor General did not attempt to defend the challenged rules because they are not defensible. This Court has already explicitly recognized that "local" rules, such as challenged here, are "difficult to justify." *Frazier v. Heebe*, 482 U.S. 641, 647 n. 7 (1987)

It cannot be denied that the challenged "local" rules defile the First Amendment. England's King George III forbid our American forefathers to speak out against his demand for taxation (without representation), and to join together and associate with other colonists, and he refused to entertain their petitions for redress of grievances. This tyranny produced the American Revolution. American citizens have formed a constitutionally based Government that has guaranteed their sacred First Amendment rights. These rights have become a monument to liberty and an exalted example for the entire world.

The First Amendment's guarantee is that American citizens have a constitutionally protected right to speak (advocate) as they think, associate with whom they choose, and "to petition the Government for redress of grievances." (emphasis added) These sovereign First Amendment rights belong to the people. These rights are at the apex of our constitutional hierarchy. They apply to ideas and people that we hate. That these challenged local Federal District Court rules either handicap or entirely ban the petitioners' exercise of their sacred First Amendment rights is incontrovertible. The petitioners' first and third- party standing to challenge the subject "local" Federal District Court rules is obvious as a neon sign on the courthouse roof saying "Negroes Not Wanted." That the petitioners, and other Americans similarly situated, do not present a "clear and present danger" that would justify this prior restraint in a federal public forum is indisputable. The Solicitor General has not denied that the challenged rules trample the textually enumerated sacred First Amendment rights, because like footprints in knee-deep snow, it is plainly obvious that they do.

This Honorable Court should not turn a blind-eye to the application of the First Amendment strict-scrutiny standard of review for regulations affecting nude-dancers wearing pasties, hate crimes such as people burning nazi crosses on other's lawns, flag-burners, abortion protestors, and cable networks peddling smut: And then permit a secret

rational basis standard for members of the bar who also have First Amendment rights. Petitioners, as mobile federal practice attorneys have a constitutional duty to vindicate federal rights and champion locally unpopular claims. They should not be compelled to secretly forfeit their First Amendment rights on crossing a State line.

Justice Brandeis, in recognizing that the law needed to be fit for its purpose, quoted a poem by James Russell Lowell,[1] that succinctly summarizes the herein challenged "feudal" rules and antiquated judicially sanctioned "feather-bedding,"

> *"New times, demand new issues and new men,*
> *The world advances, and in time outgrows the laws*
> *That in our father's time were best;*
> *And, doubtless, after us some purer scheme*
> *Will be shaped out by wiser men than we, --*
> *Made wiser by the steady growth of truth*

Likewise, it cannot be denied that that the challenged "local" Federal District Court rules disobey the command of Congress declared in *Title IV of the 1988 Judicial Improvements and Access to Justice Act* (Pub.L. 100-702). The Solicitor General has tacitly admitted that the challenged balkanized "local" rules prostrate the expressed intent of Congress that "local" rules shall be uniform; and that local rules shall not abridge, modify, or enlarge any substantive rights. See 28 U.S.C. §§ 2071-72, 331-32. The Solicitor General has not denied that the challenged balkanized rules disobey the commands of Congress because it is obvious that they do.

The respondents further have not (and cannot) deny that the challenged "local" rules are descended from the most despised decisions in the history of this Honorable United States Supreme Court. *See Dred Scott v. Sandford* 60 U.S.

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[1] Phillipa Strum, Louis D. Brandeis: Justice For The People, (1984 Random House) p. 127 (citing Lowell's "A Glance Behind The Curtain')

(19 Howard) 393 (1856); *In re Lockwood*, 154 U.S. 116 (1894)

Likewise, it cannot be denied that the challenged "local" Federal District Court rules stain the integrity of the federal bench according to the American Bar Association, the Reporter for the American Law Institute, the National Bankruptcy Review Commission, and multiple other commentators and respected arms of the bar. The Solicitor General has not denied these public denunciations because they cannot be denied.

One Washington D.C. newspaper reporter, commenting on the legal issues raised in this petition exclaimed that we have "tweaked" the Court. Not so. (At least not purposely or maliciously.) Truth is the summit of being; justice is the application of it to affairs.[2] Men of honor like to hear of their faults, so that they can correct them. The truth will set us free. Liberty and freedom is man's inalienable right. This country was born in protest. Protest is as American as the Stars and Stripes. It is enshrined in the right to advocate, associate, and "to petition the Government for redress of grievances." The petitioners here have been created equal, and they should have equal First Amendment liberties.

When the First Amendment was being ratified, and former Chief Justice Roger Brooke Taney was going to college, he walked the eighty-mile distance. It took him two weeks. In this new millennium and internet-era, the Honorable Justices serving on this consecrated Court, who serve as a the foremost example to our entire nation, cannot expect American citizens and members of the bar, to continue being treated like Dred Scott by antiquated local rules that plunder their First Amendment rights. Here, U.S. District Judges are not wearing clothes, and it is folly to suggest

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[2] Ralph Waldo Emerson, The Selected Writings of Ralph Waldo Emerson, p. 332 (1992 Modern Library Edition)(Essay on Character)

petitioners or anyone else can go on pretending these jurists are clothed.

For all of the foregoing reasons, the petitioners request this Honorable Court to grant *certiorari* review.

Dated: August 24, 2000

Respectfully submitted,
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